

Executive Summary:

This background paper aims to provide the context for discussions at the conference, by summarising the most significant recent developments at the international and regional levels, which indicate a new focus on the role of national parliaments in the protection and realisation of the rule of law and human rights.

Actions at the international level

- (i) The UN General Assembly has committed, in a resolution passed in December 2010, to taking a more systematic approach to integrating a parliamentary contribution to major UN deliberative processes and to its review of states' international commitments. In May 2012, the General Assembly adopted a resolution addressing the role of parliaments at the UN for the first time. In May 2014, the General Assembly adopted a further resolution recognising the need for greater interaction and calling for stronger cooperation between the UN, national parliaments, and the Inter-Parliamentary Union. At its 70th session later this year, the General Assembly will revisit this topic, and it will also pass a set of Sustainable Development Goals, which include several sub-goals relating to human rights and the rule of law, and recognising the importance of effective, accountable and transparent institutions.
- (ii) At the September 2012 High-level Meeting on the Rule of Law at the National and International Level, the world's Heads of State and Government 'recognize[d] the essential role of parliaments in the rule of law at the national level, and welcome the interaction among the United Nations, national parliaments and the Inter-Parliamentary Union'
- (iii) The UN Human Rights Council (UNHRC) held, in May 2013, its first panel discussion of the contribution of parliaments to the work of the Council and its Universal Periodic Review. The Inter-Parliamentary Union (IPU) then collaborated with the Office of the High Commissioner for Human Rights (OHCHR) to conduct four regional seminars in Bucharest, Rabat, Montevideo and Manila between 2013 and 2015 to build parliamentary capacities to contribute, before organising a side event on this topic at the UNHRC's June 2015 session. The UNHRC passed a resolution on this topic in June 2014, and is expected to discuss it again at its September 2015 session, and to pass a resolution authorising another panel discussion on the subject in 2016. It is hoped that the conclusions and outcomes of this conference will feed into those future discussions.
- (iv) The UN Committee on the Elimination of Discrimination Against Women issued a statement in 2010 recommending that States parties ensure the full participation of Parliament and its members in the reporting process and the full implementation of the Convention and its Protocol, and setting out a number of ways in which States can do so. This builds upon that UN Committee's longstanding cooperation with the Inter-Parliamentary Union directed at engaging parliamentarians with its work.

Actions at the regional level

- (v) The European Convention on Human Rights is being amended in a way which makes the role of national parliaments more important and the case-law of the European Court of Human Rights has developed to require courts throughout the Council of Europe's 47 Member States to pay closer attention to parliamentary consideration of human rights. The Court has also elaborated doctrines of 'subsidiarity' and 'margin of appreciation' that enables it to defer to a decision of national governments or parliaments, if it is demonstrated to the Court's satisfaction that there has been consideration of all the relevant human rights issues in the deliberative process, and the decision is in substance defensible in a democracy.
- (vi) The Parliamentary Assembly of the Council of Europe has also worked assiduously to encourage national parliaments to take a more active role in supervising the implementation of judgments of the European Court of Human Rights, and also to systematically scrutinise all draft legislation to ensure their compatibility with the European Convention.
- (vii) The Council of the European Union has just passed a new Action Plan on Human Rights and Democracy 2015-2019 which commits the EU, its institutions and Member States to support the development of legislative, budgetary and oversight prerogatives of parliaments of third states, to assist these parliaments in organising public debates on key reform issues with due account being taken of relevant international human rights obligations and standards, and to include a parliamentary dimension in EU and EU Member States' good governance programmes and budget support.
- (viii) The Inter-American Court on Human Rights was an early recogniser of the role of parliaments in the realisation and protection of the rule of law and human rights, in its 1986 Advisory Opinion on the scope of the word 'laws' in the American Convention on Human Rights. While both the Inter-American Commission on Human Rights and Inter-American Court of Human Rights have not hitherto included national parliaments in their work, there is a current opportunity to do so, and to strengthen their links with regional assemblies such as the Latin American Parliament during the on-going re-organisation of the Organization of American States in line with its new strategic vision.
- (ix) While both the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights have not hitherto included national parliaments in their work, a number of recommendations have identified the emerging Pan African Parliament as a possible partner in monitoring the implementation of the decisions and recommendations of the regional human rights mechanisms, and in engaging national parliaments, civil society organisations and the African peoples on human rights.
- (x) The Commonwealth Secretariat and Commonwealth Parliamentary Association have facilitated the establishment of a number of Parliamentary Human Rights Groups, including the Commonwealth Caribbean Parliamentary Human Rights Group, the Commonwealth African Parliamentary Human Rights Group, and they are now in the process of establishing a Commonwealth Pacific Parliamentary Human Rights Group.
- (xi) Two regional meetings of Commonwealth Parliamentarians have also led to the adoption of the Mahe Declaration in 2014, and the Pipitea Declaration in August 2015, which commits the Parliamentarians to the establishment of Parliamentary Human Rights Committees, increased

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engagement with international and regional human rights mechanisms, and the protection and promotion of human rights.

- (xii) An increasing number of regional and sub-regional parliaments with mandates including the promotion of human rights have been established, most recently the Arab Parliament in 2012. These parliamentary assemblies have been identified by the EU's Directorate-General for External Affairs' Policy Department as possible partners in the movement to strengthen regional human rights mechanisms, and could also be persuaded to take up the agenda of strengthening national parliaments' protection of human rights at the international and domestic levels.

Previous Actions Taken

At the international level

The UN General Assembly

Action at the UN General Assembly level began in 2010 with the adoption of a resolution¹ recognising the contributions of the Inter-Parliamentary Union in support of the UN's activities, and deciding to pursue a more systematic engagement with the Inter-Parliamentary Union in organizing and integrating a parliamentary component of and contribution to major United Nations deliberative processes and the review of international commitments. The General Assembly has since passed two more resolutions, at its 2011-2² and 2013-4³ sessions, which have invited Member States to consider ways to work regularly with the Inter-Parliamentary Union in facilitating a parliamentary component to major United Nations conferences and in more closely linking the annual parliamentary hearing at the United Nations to the main United Nations processes, so as to help to inform such deliberations from a parliamentary perspective.

At the September 2012 High-level Meeting on the Rule of Law at the National and International Level, the Heads of State and Government declared that they 'recognize the essential role of parliaments in the rule of law at the national level, and welcome the interaction among the United Nations, national parliaments and the Inter-Parliamentary Union'⁴.

It is clear from the supporting documentation and the speeches in the Assembly that the motivation behind these initiatives at the international level include not only instrumental concerns about effectiveness, but democratic concerns about the legitimacy of the international system for the protection of human rights.⁵ The UN Secretary-General, for example, said not only that it was clear today that it is only by involving other actors such as national parliaments, as well as governments, that the UN can hope to achieve its goals, but that mobilising parliaments at the national level promotes greater transparency, accountability and participation at the global level, which goes a long

¹ UNGA Res 65/123 'Cooperation between the United Nations, national parliaments and the Inter-Parliamentary Union' (13 December 2010) UN Doc A/RES/65/123 <www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/123>

² UNGA Res 66/261 'Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union' (29 May 2012) UN Doc A/RES/66/261 <www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/66/261>

³ UNGA Res 68/272 'Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union' (19 May 2014) UN Doc A/RES/68/272 <www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/272>

⁴ UNGA Res 67/1 'Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels' (24 September 2012) UN Doc A/RES/67/1 <www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/1> para 34

⁵ Murray Hunt, 'Enhancing Parliaments' Role in the Protection and Realisation of Human Rights' in Murray Hunt, Hayley Hooper and Paul Yowell (eds), *Parliaments and Human Rights* (OUP 2015) p 479

Background Paper on the Role of Parliaments in the Realisation and Protection of the Rule of Law and Human Rights way to establishing a more democratic international order'.⁶ Indeed, the General Assembly resolutions refer to the need to 'continue efforts to bridge the democracy gap in international relations'. Enhancing the role played by national parliaments serves the goal of effective implementation, because it is Parliament that adopts the necessary legislation to take international commitments forwards, adopts the budget to provide the resources to make it possible and hold governments to account for their commitments at the UN. But it also serves the goal of legitimization, because the representative function of parliaments mean they are best placed to ensure that what is decided at the UN makes sense to citizens at large, and reflects their views and aspirations. The aim is to make sure that parliaments are fully aware of what is taking place at the UN 'before the deal is sealed' and that they debate what is being proposed at the UN level, both amongst themselves and with their governments, 'so that, at the end of the day, there is full national ownership of the process'.⁷

At its 70th session later this year, the General Assembly will revisit the agenda item of 'Interaction between the United Nations, National Parliaments and the Inter-Parliamentary Union', after hearing the Report from the Secretary-General on this agenda item, which it commissioned by its 2014 resolution. The General Assembly is also expected to adopt the Sustainable Development Goals, which are intended to replace the Millennium Development Goals as the primary goals of the global development agenda. Goal 16, on the promotion of just, peaceful and inclusive societies, includes a number of sub-goals relating to human rights and the rule of law, such as:

- 'Promote the rule of law at the national and international levels and ensure equal access to justice for all';
- 'Promote and enforce non-discriminatory laws and policies for sustainable development';
- 'Develop effective, accountable and transparent institutions at all levels'; and
- 'Ensure responsive, inclusive, participatory and representative decision-making at all levels'.⁸

While parliaments are not explicitly mentioned in the Sustainable Development Goals, they will certainly be relevant to their implementation.

The UN Human Rights Council

The UN Human Rights Council has been exploring ways in which parliaments can contribute to the work of the Council and its Universal Periodic Review. At present, the majority of parliaments and parliamentarians are not aware of the Human Rights Council and its Universal Periodic Review, and are not involved in the drafting of national reports, the decision on which recommendations of the Universal Periodic Review to accept, and the monitoring of the implementation of recommendations which have been accepted.

The Human Rights Council held a panel discussion⁹ on this topic in May 2013, which revealed unanimity about the desirability of increasing the role of parliaments in the promotion and protection of human rights, though there were great divergences in current practice. One notable practice

⁶ UNGA 'Report of the Secretary-General on the Interaction between the United Nations, National Parliaments and the Inter-Parliamentary Union' (2 April 2014) UN Doc A/68/827 <www.ipu.org/Un-e/a-68-827.pdf> para 1-5

⁷ Inter-Parliamentary Union, 'Statement by the President Hon. Abdelwahad Radi to the United Nations General Assembly' (19 May 2014) <www.ipu.org/Un-e/sp-unga190514.pdf>

⁸ UN Department of Public Information, 'Goal 16: Promote just, peaceful and inclusive societies' (UN.org, accessed 26 August 2015) <www.un.org/sustainabledevelopment/peace-justice/>

⁹ UNHRC Res 26/29 'Contribution of parliaments to the work of the Human Rights Council and its universal periodic review' (17 July 2014) UN Doc A/HRC/RES/26/29 <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/29>

Background Paper on the Role of Parliaments in the Realisation and Protection of the Rule of Law and Human Rights emerging from the panel discussion was South Africa's requirement that all national reports to the Universal Periodic Review and international treaty bodies had to be reviewed by parliament before they could be submitted. The discussion demonstrated the urgent need for a better way of sharing best practices between national parliaments.

The Human Rights Council subsequently adopted a resolution¹⁰ in 2014 that made the following recommendations:

1. Encourages states to promote the involvement of parliaments at all stages of the universal periodic review reporting process, in particular through the inclusion of the national parliament as a relevant stakeholder in the consultation process of the national report and in the implementation of recommendations; and to report on such involvement in their national report and voluntary mid-term reports or during the interactive dialogue session of the universal periodic review;
2. Encourages states to include parliamentarians in their national delegations to the universal periodic review;
3. Encourages all relevant stakeholders to promote and enhance cooperation between their national parliaments and national human rights institutions and civil society in the promotion and protection of all human rights and fundamental freedoms

With the endorsement of the UNHRC, the Inter-Parliamentary Union has collaborated with the UNOHCHR to conduct four regional seminars in Central and Eastern Europe (Bucharest, February 2014), South America (Montevideo, July 2014), Africa (Rabat, September 2014), and the Asia-Pacific (Manila, February 2015) on 'translating international human rights commitments into national realities: The contribution of parliaments to the work of the United Nations Human Rights Council', bringing together parliamentarians to discuss the topic, and exchange best practices. The outcome documents of these four seminars are highly recommended reading for those interested in the possible content of any future principles and guidelines on the role of parliaments in the realisation and protection of the rule of law and human rights.¹¹ In brief, the outcome documents recommend that Parliamentarians should be actively engaged at every point in the Universal Periodic Review cycle, that Parliaments should contribute to human rights protection at the national level, and that further capacity building should take place to enhance parliamentarians' knowledge of human rights and of international human rights mechanisms, and understanding how to engage them. The regional seminars culminated in a Side Event held at the June 2015 session of the UNHRC, at which the Deputy High Commissioner for Human Rights¹² stressed the leading role of parliaments in the promotion and protection of human rights, which she said was crucial to ensure that States respect and implement their international human rights obligations and voluntary pledges and commitments. She indicated that OHCHR, together with the IPU, is in the process of finalizing a first

¹⁰ UNHRC Res 26/29 'Contribution of parliaments to the work of the Human Rights Council and its universal periodic review' (17 July 2014) UN Doc A/HRC/RES/26/29 <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/29>

¹¹ (1) Inter-Parliamentary Union and Chamber of Deputies of the Romanian Parliament, *Summary and Recommendations Presented by the Rapporteur of the Seminar* (Bucharest, 17-18 February 2014);

(2) Inter-Parliamentary Union and General Assembly of Uruguay, *Conclusions and Recommendations* (Montevideo, 15-16 July 2014) <www.ipu.org/splz-e/montevideo14.htm>;

(3) Inter-Parliamentary Union and Parliament of the Kingdom of Morocco, *Rabat Declaration* (Rabat, 29-30 September 2014); and

(4) Inter-Parliamentary Union and Senate of the Philippines, *Report of the Seminar* (Manila, 26-27 February 2015) <www.ipu.org/splz-e/manila15.htm>

¹² UNOHCHR 'Opening statement by Flavia Pansieri, Deputy High Commissioner for Human Rights at the Side event on the role of Parliaments in the work of the HRC, in particular the UPR' (Geneva, 22 June 2015) <www.ohchr.org/ar/NewsEvents/Pages/DisplayNews.aspx?NewsID=16194&LangID=E>

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compilation of good practices of engagement of Parliamentarians, drawing from the various examples shared during the regional seminars.

The UNHRC is next due to discuss the role of Parliaments in the work of the HRC, in particular the UPR, at its 30th session between 14th September and 2nd October this year. It is expected that a Core Group of states including Ecuador, Italy, Morocco, the Philippines, Romania, Spain and Uruguay will present a follow-up resolution to UNHRC Res 26/29, which will recommend the authorization of a panel discussion on the same topic next year.

The UN Committee on the Elimination of Discrimination Against Women

The UN Committee on the Elimination of Discrimination Against Women (the CEDAW Committee) has issued a statement¹³ recommending that States parties ensure the full participation of Parliament and its members in the reporting process and the full implementation of the Convention and its Protocol, and setting out a number of ways in which States can do so, such as Parliamentary involvement in the drafting of reports and following up on the concluding observations, which could considerably enhance the implementation of the recommendations of the Committee.

The CEDAW Committee has also received considerable support from the Inter-Parliamentary Union, including an established practice in which the Secretary- General of IPU writes to the presidents of the legislative assemblies to inform them about the upcoming consideration of the report of their country by the Committee, and brings to their attention the recommendations adopted once the Committee's concluding observations are available. The IPU has also published a practical guide for the use of parliamentarians on the Convention and its Optional Protocol, regularly organises briefings on the Convention (addressed to women parliamentarians in particular), and collaborates with UNOHCHR to provide technical assistance programmes in order to build the capacities of parliaments and helps them fulfil their role regarding the implementation of the Convention and its Optional Protocol.

At the regional level

Europe

Council of Europe (47 States parties to the European Convention on Human Rights)

The European Convention of Human Rights is widely recognised as one of the world's most successful regional systems for the protection of human rights in the world, yet it is only relatively recently that the role of national parliaments in this system has become the subject of serious consideration. This has largely been due to the work of the Parliamentary Assembly of the Council of Europe (PACE), and in particular, the Assembly's Committee on Legal Affairs and Human Rights, which has worked assiduously to draw attention generally to the importance of the parliamentary dimension of human rights protection, and specifically, to increase the role of national parliaments in relation to the ECHR. The most significant initiatives have been designed to encourage national parliaments to take a more active role in supervising the implementation of judgments of the European Court of Human Rights, but they have also sought to encourage national parliaments to scrutinise systematically all draft legislation to ensure it is compatible with the ECHR.¹⁴

¹³ UN Committee on the Elimination of Discrimination Against Women, *Statement on the relationship of the Committee on the Elimination of Discrimination against Women with parliamentarians* (2010)
<www.ohchr.org/Documents/HRBodies/CEDAW/Statements/Parliamentarians.pdf>

¹⁴ see for example, para 6 of the Resolution and para 46 of Explanatory Memorandum, Report of the Committee on Legal

Progress towards recognising the importance of the role of national parliaments in the Convention system has been slow, however. It should never be forgotten that stewardship of the Convention system rests with an essentially intergovernmental process, and governments are not always the best champions of national parliaments, which can sometimes obstruct or slow down the implementation of a government's will. Until recently, parliaments have generally not been mentioned in the outcome documents of the high-level conferences held to consider reform of the ECHR system. In the 2012 Brighton Declaration¹⁵, however, the Council of Europe agreed to take a number of practical measures designed to achieve better national implementation of the Convention, including by providing national parliaments with information about the compatibility with the Convention of draft legislation, which should facilitate better parliamentary scrutiny of laws for ECHR compatibility. The 2015 Brussels Declaration¹⁶ continues to stress the importance of national parliaments in the implementation of judgments and scrutiny of draft legislation, and calls on States to provide parliaments with the information necessary to fulfil its role.

The main impetus for this recent breakthrough in recognising the role of national parliaments in the ECHR system has come from the growing realisation that better national implementation of the Convention is the key to its long-term effectiveness. The urgent need to take effective action to reduce the huge backlog of cases awaiting determination by the European Court has led to renewed attention to ways of preventing so many cases from reaching it. At the same time, there has been growing concern in some states, including but not confined to the UK, that the Court has exceeded its jurisdiction in some decisions, interfering excessively with the democratic decisions of national authorities.

The confluence of these concerns about effectiveness and legitimacy has brought about a renewed interest in the concepts of 'subsidiarity' and the 'margin of appreciation', culminating in the agreement of a new Protocol¹⁷ amending the Convention which will add a reference to both concepts to the Preamble of the Convention. This Protocol, when it comes into force, will provide an opportunity for the Court to embed its recent refinements of the principle of 'subsidiarity' and the doctrine of 'margin of appreciation' within the Convention system.¹⁸

Affairs and Human Rights, *The effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond* (Rapporteur: Mr Yves Pozzo di Borgo) (10 December 2014) <<http://website-pace.net/documents/19838/1041670/20141210-BeyondBrighton-EN.pdf/9b39d1d4-e9b2-44ea-baaa-901ced892426>>

¹⁵ Council of Europe, 'Brighton Declaration adopted at the High-level Conference on the future of the European Convention on Human Rights' (20 April 2012) <www.coe.int/t/dghl/standardsetting/cddh/CDDH-DOCUMENTS/CDDH_2012_007_en.pdf>

¹⁶ Council of Europe, 'Brussels Declaration adopted at the High-level Conference on the 'Implementation of the European Convention on Human Rights, our shared responsibility'' (27 March 2015) <http://justice.belgium.be/fr/binaries/Declaration_EN_tcm421-265137.pdf>

¹⁷ Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms

¹⁸ As Judge Robert Spano of the European Court of Human Rights has suggested, the Court in its recent case law has demonstrated its willingness to defer to the reasoned and thoughtful assessment by national authorities of their Convention obligations, and so begun to develop a more 'qualitative, democracy-enhancing' approach to its supervisory function: see 'Universality or Diversity of Human Rights? Strasbourg in the Age of Subsidiarity' (2014) HRLR 1 <<http://hrlr.oxfordjournals.org/content/14/3/487.abstract>>

European Union (28 States parties to the Treaty on European Union)

The Treaty on European Union states that the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, and is committed to uphold these values in its relations with the wider world, and to promote the rule of law and human rights in its external action policy.¹⁹ Because of this, the European Parliament seeks to mainstream human rights in its work, including by ensuring internal/external coherence in human rights policy, as well ensuring that human rights compliance is reflected in its other policies such as trade, migration and interactions with strategic partners. This is regarded as a priority task which has many dimensions within the European Parliament, covering the work of parliamentary committees and inter-parliamentary delegations.²⁰

The European Parliament's Sub-Committee on Human Rights, which scrutinises issues relating to human rights outside the EU, commissioned a set of policy studies on the role of regional human rights mechanisms between 2010 and 2012, which recognised that national parliaments are a key institution for the development of regional human rights protection systems, and recommended that the European Parliament advocate for the strengthening of regional human rights protection systems using the modalities of parliamentary cooperation arrangements such as the ACP-EU, AIPA, ASEP, EUROMED and EUROLAT Parliamentary Assemblies²¹ as well as parliamentary delegations to third states.²² The study on regional human rights mechanisms also recognised the importance of the IPU as a forum for promoting the role of parliaments in the implementation of international and regional human rights instruments, and recommended that that an approach to regional human rights protection mechanisms through the IPU will likely foster agreement among national legislators of the need to bring their legislations in harmony with the regional system mechanisms.

The Council of the European Union has also recently adopted a new EU Action Plan on Human Rights and Democracy, which reaffirms the EU's commitment to promote and protect human rights and to support democracy worldwide, and which commits the EU, its institutions and Member States to support the capacity-building of Parliamentary institutions, strengthen cooperation with the UN and regional Human Rights and Democracy mechanisms, and promote stronger partnership with third countries' Civil Society Organisations (CSO), including by facilitating and supporting structured exchanged between governments, parliaments and CSOs. The EU's new Action Plan could therefore be an opportunity to promote a greater role for parliaments in relation to the rule of law and human rights.

¹⁹ Treaty on European Union, Articles 2, 3(5) and 21

²⁰ Council of the European Union, *EU Annual Report on Human Rights and Democracy in the World* (Brussels, 23 June 2014) <www.eeas.europa.eu/human_rights/docs/2013_hr_report_en.pdf> p 120-153

²¹ The African, Caribbean and Pacific Group of States (ACP), the ASEAN Inter-Parliamentary Assembly (AIPA), the Asia-Europe Parliamentary Partnership Meetings (ASEP) the Euro-Mediterranean Partnership (EUROMED), and the Euro-Latin American Parliamentary Assemblies

²² Policy Department of the Directorate-General for External Policies, *The Role of Regional Human Rights Mechanisms* (Brussels, November 2010); p 35; Vitit Muntarbhorn, *Development of the ASEAN Human Rights Mechanism* (Brussels, September 2012); p 2

The Americas

Organization of American States (35 States parties to the Charter of the Organisation of American States)

The Inter-American Court of Human Rights, in an Advisory Opinion²³ on the scope of the word ‘laws’ in Article 30 of the American Convention of Human Rights, has affirmed the role of parliaments in ensuring that laws are compliant with human rights and preventing the arbitrary exercise of power, although it acknowledged that this did not always prevent laws being passed that could be in violation of human rights, hence underlining the need for a system of subsequent control. The Inter-American Court concluded that the principles of legality and the requirement of law under democratic constitutionalism, required that ‘laws’, used in Article 30, can have no meaning other than that of law in the formal sense – legal norms passed by the Legislature and promulgated by the Executive Branch in the manner prescribed by the Constitution. Pinto et al. state that the rule of law expresses itself here through the role of Parliament as guardian of human rights because of its plural composition, because of the debate that is intrinsic to it and also because of the representation of political minorities.²⁴

The Inter-American Court of Human Rights and Inter-American Commission on Human Rights have faced difficulty achieving the full implementation of their reparations decisions and recommendations respectively.²⁵ This may have been hindered by the lack of systematic engagement between parliamentarians and the regional human rights mechanisms, the minimal involvement of parliamentary human rights committees in monitoring implementation, and the lack of an American analogue to the Parliamentary Assembly of the Council of Europe (PACE), which plays a leading role in monitoring compliance with the judgments of the European Court of Human Rights. The Open Society Justice Initiative has published a report recommending that regional parliamentary bodies, such as the Latin American Parliament, should consider forging a similar practice to PACE.²⁶

The Organization of American States (OAS) General Assembly, the supreme organ of the OAS, recently adopted a new ‘Strategic Vision’ including a ‘Vision Statement’ committing the OAS to the strengthening of democracy and the promotion and protection of human rights,²⁷ in 2014. Since then, it has committed to consolidating the inter-American system for the promotion and protection of human rights, and to providing specialized technical assistance to member states in strengthening their national capabilities in the regulatory, institutional, and public policy areas in terms of promotion, observance, and protection of human rights.²⁸ Efforts are presently underway to re-

²³ *The Word ‘Laws’ in Article 30 of the American Convention on Human Rights*, Advisory Opinion OC-6/86, Inter-American Court of Human Rights Series A No 6 (9 May 1986)

²⁴ Mónica Pinto, Lucas E. Barreiros and Nadia Uman, ‘Human Rights and the Rule of Law’ (World Justice Project, 2013)

²⁵ In its 2014 Annual Report, the Inter-American Commission on Human Rights provided tables of recommendations over the preceding 11 years, which demonstrated that Member States had fully complied with its recommendations in 21.2% of cases, partially complied with its recommendations in 62.2% of cases, and failed to comply in 16.6% of cases. In its 2014 Annual Report, the Inter-American Court of Human Rights announced that it was monitoring compliance in 158 contentious cases, which can be interpreted to mean that the Court has achieved full compliance in around 10% of its reparations decisions.

²⁶ Open Society Justice Initiative, *From Rights to Remedies: Structures and Strategies for Implementing International Human Rights Decisions* (Open Society Foundations, 2013) p 224

²⁷ Organization of American States, ‘Strategic Vision of the Organization of American States’ General Assembly Res AG/Res 2814 (XLIV-O/14), (Asunción, June 2014)

²⁸ Organization of American States, ‘Guidelines and Objectives of the Strategic Vision of the Organization of American States’ General Assembly Res AG/Res 1 (XLVII-E/14) (Washington DC, September 2014)

Background Paper on the Role of Parliaments in the Realisation and Protection of the Rule of Law and Human Rights organise the OAS Secretariat to align it with the new strategic vision²⁹, and this could present an opportunity for the OAS Secretariat to promote an increased role of legislatures in the protection and promotion of human rights.

Africa

African Union (54 States parties to the Constitutive Act of the African Union)

While 53 African States have ratified the African Charter on Human and Peoples' Rights (with the exception of South Sudan), only 29 have so far ratified the optional Protocol establishing the African Court on Human and Peoples' Rights. The African Court has adopted a practice of sending its judgments to the parties, to the Member States of the African Union and the African Commission on Human and Peoples' Rights, but does not yet engage national parliaments on the implementation of its judgments.

While the African Commission on Human and Peoples' Rights has been encouraged to 'reflect on ways and means to establish formal relationships with African national Parliaments in the human rights areas, including the domestication of human rights instruments',³⁰ it is not common practice for the African Commission on Human and Peoples' Rights to inform national legislatures of its findings, and in particular its decisions on individual communications. This is therefore dependent on the government or civil society organisations. Overall, there are few occasions on which African Commission findings are debated in domestic legislatures.³¹

A Pan-African Parliament, composed of parliamentarians from each of the Member States of the African Union (AU), was established in 2001. It has a mandate including facilitating 'the effective implementation of the policies and objectives of the AU' (which include the protection and promotion of human rights) and 'promot[ing] the principles of democracy and human rights in Africa' and will eventually have legislative powers.³² The Open Society Justice Initiative,³³ as well as the authors of a new seminal work on the African Commission of Human and Peoples' Rights,³⁴ have recommended that the Pan-African Parliament should consider emulating PACE in engaging with regional human rights mechanisms to monitor the implementation of their decisions and recommendations, and to facilitate their dissemination at the national level in order to engage parliamentarians and thereby 'provide a common platform for African peoples and their grass-roots organisations to be more involved in discussions and decision-making on the problems and challenges facing the continent.'³⁵

²⁹ Organization of American States, 'Modernization and reorganization of the General Secretariat in Accordance with the Strategic Vision for the Organisation and for Strengthening the Inter-American System' General Assembly Res AG/Res 2876 (XLV-O/15) (Washington DC, June 2015)

³⁰ Twentieth Activity Report of the African Commission on Human and Peoples' Rights, EX.CL/279 (IX), Annex II, *Report of the Brainstorming Meeting on the African Commission on Human and Peoples' Rights* (The Gambia, 2006) at paras 63-6

³¹ 'Follow-up and Implementation at the National Level' in Rachel Murray and Debra Long, *The Implementation of the Findings of the African Commission on Human and Peoples' Rights* (CUP 2015)

³² Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament (adopted 2 March 2001, entered into force December 2003)

³³ Open Society Justice Initiative, *From Rights to Remedies: Structures and Strategies for Implementing International Human Rights Decisions* (Open Society Foundations, 2013) p 224

³⁴ 'The Role of the African Union' in Rachel Murray and Debra Long, *The Implementation of the Findings of the African Commission on Human and Peoples' Rights* (CUP 2015) p 167, 183-184

³⁵ Preamble to the Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament (adopted 2 March 2001, entered into force December 2003)

Asia-Pacific

A note on sub-regional bodies

Because there are no regional bodies with human rights mechanisms for the Asia-Pacific region as a whole, it is necessary to consider the region from the perspective of its sub-regional bodies. Due to constraints of space, this background paper will only consider the sub-regions with specific human rights mechanisms. While it is not possible to cover all the other sub-regions in detail, including those within the Asia-Pacific region as well as those outside, their sub-regional bodies and parliamentary assemblies should not be forgotten in any discussion of the role of parliaments.

Association of Southeast Asian Nations (10 States parties to the ASEAN Charter)

The impetus to establish a regional human rights mechanism at the Association of Southeast Asian Nations (ASEAN) level started with the 1993 Vienna Declaration and Programme of Action, and was partly driven by the Working Group for an ASEAN Human Rights Mechanism, an informal coalition of parliamentary human rights committees, representatives of government institutions, the academy and NGOs formed in the mid-1990s.³⁶ Nevertheless, it was only in 2009 that the ASEAN Intergovernmental Commission on Human Rights was set up, a consultative body with a mandate to promote and protect human rights but no power to receive individual complaints from victims of human rights abuses or to undertake fact-finding missions.³⁷ The role of national parliaments has not featured in its Five Year Work Plans yet.

The ASEAN Inter-Parliamentary Assembly (AIPA), whose aims and purposes include the promotion of the principles of human rights, democracy, peace, security and prosperity³⁸, is not a formal regional parliament for ASEAN, but a regional assembly of national parliamentarians from the ten member countries of ASEAN, which has a long history of association and cooperation with ASEAN³⁹. AIPA passed resolutions on strengthening of democracy and promotion of human rights in its 2008 and 2009 sessions, the 2008 resolution stressing the important roles of AIPA Member Parliaments as legitimate representatives of the ASEAN people in strengthening democratization in regional institutions and furthering the promotion and protection of human rights.⁴⁰ An informal grouping of ASEAN Parliamentarians for Human Rights has also been formed since 2013, and it includes many of the region's most progressive parliamentarians with a proven track record of human rights advocacy work.⁴¹

Arab States

The League of Arab States (LAS) adopted an Arab Charter of Human Rights in 2004, which entered into force on 15 March 2008, two months after being ratified by 7 nations. The Charter has since

³⁶ Working Group for an ASEAN Human Rights Mechanism, *About Us* (aseanhrmech.org, accessed 23rd August 2015)

³⁷ Vitit Muntarbhorn (fn 21) p 10

³⁸ The Statutes of the ASEAN Inter-Parliamentary Assembly <www.aipasecretariat.org/about/statutes/> Article 2

³⁹ Imelda Deinla, *Giving the ASEAN Inter-Parliamentary Assembly a Voice in the ASEAN Community* (International Institute for Democracy and Electoral Assistance, 2013) p 5

⁴⁰ ASEAN Inter-Parliamentary Assembly, 'Resolution on Strengthening Democracy, Promotion, and Protection of Human Rights' Res 29GA/2008/Pol/02 (Singapore, 2008) <http://www.aipasecretariat.org/wp-content/uploads/2010/04/Res_Politic-Matterstill31GA.pdf>

⁴¹ ASEAN Parliamentarians for Human Rights, *About APHR* (aseanmp.org, accessed 23rd August 2015)

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been ratified by 13 out of the 22 Member States of the LAS, and created an Arab Human Rights Committee charged with reviewing Reports submitted by ratifying states.

The Baghdad Summit in March 2012 established a permanent Arab Parliament under the auspices of the LAS, which is mandated, amongst other things, to develop Arab cooperation in the field of human rights and present recommendations accordingly.⁴² The Arab Parliament does not have the mandate to draft agreements, but can approve agreements referred to it, and can also issue recommendations that have to be approved by a Ministerial Council or a Summit. It is composed of four parliamentarians for each member state of LAS, who are either elected directly from their national parliament, or otherwise chosen or appointed from their own national parliament. The Arab Parliament now has a Committee on Legal and Human Rights Affairs, and has met six times since its inception.⁴³

Because neither the Arab Human Rights Committee nor the Arab Parliament make their outcome documents available on their websites, it is not possible to conclusively set out their interactions with national parliaments, although the academic literature suggests that this is nascent.

Commonwealth Parliamentary Human Rights Groups

At the last Commonwealth Heads of Government Meeting (CHOGM) in 2013, the Heads reaffirmed their belief in the rule of law, commitment to equality and respect for the protection of human rights, and committed to building the capacity of member states to work with the UPR and implement the accepted recommendations, with the assistance of the Commonwealth Secretariat as appropriate. They noted the work being done by the Commonwealth Secretariat in this regard, particularly with small states, and encouraged these efforts to continue.⁴⁴

Over the last three years, as part of its on-going efforts to support countries to prepare for the UN's Universal Periodic Review process⁴⁵, the Commonwealth Secretariat and Commonwealth Parliamentary Association have organised three regional seminars for members of parliament on the role of parliamentarians in the promotion and protection of human rights in Trinidad and Tobago (2013), the Seychelles (2014) and New Zealand (August 2015). This led to the establishment of a number of Commonwealth Parliamentary Human Rights Groups, including the Commonwealth Caribbean Parliamentary Human Rights Group and a Commonwealth African Parliamentary Human Rights Group, with a Commonwealth Pacific Parliamentary Human Rights Group in the process of establishment.

When established, the aims of the Commonwealth Pacific Parliamentary Human Rights Group will be to promote inter-parliamentary co-operation with a view to ensuring better practices and strengthened parliamentary engagement with the Universal Periodic Review, Treaty Bodies and Special Procedures and the durable implementation of their recommendations; enhanced interaction between parliaments and NHRIs; operationalisation of the relevant regional declaration; and strengthened efforts to promote and protect human rights.

⁴² LAS Summit Decision 559, 'Adoption of the Statute of the Arab Parliament' (Doha, 29 March 2013)

⁴³ Mervat Rishmawi, 'The League of Arab States and human rights' in Scott Sheeran and Sir Nigel Rodley (eds) *Routledge Handbook of International Human Rights Law* (Routledge, 2013)

⁴⁴ Commonwealth Heads of Government Meeting, 'CHOGM 2013 Communiqué' (Colombo, 15-17 November 2013), para 35-39 <thecommonwealth.org/sites/default/files/events/documents/CHOGM_2013_Communique_0.pdf>

⁴⁵ Commonwealth Secretariat, 'Supporting countries to prepare for the UN's Universal Periodic Review Process' <thecommonwealth.org/project/supporting-countries-prepare-uns-universal-periodic-review-process>

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The Seychelles and New Zealand regional seminars also resulted in the adoption of the Mahe Declaration⁴⁶ and Pipitea Declaration⁴⁷, which make recommendations addressing the role of Parliaments in the realisation and protection of human rights at the national level, the regional level and the international level. They are highly recommended reading for those interested in the possible content of draft principles and guidelines on the role of parliaments in the realisation and protection of the rule of law and human rights.

Conclusion: A lack of systematic guidelines and internationally agreed standards

As can be seen, while there is growing consensus about the desirability of increasing the role of parliaments in upholding the rule of law and human rights, there is very little in the way of concrete guidance to show how that desirable end could be achieved, or agreed standards about the minimum requirements for such parliamentary involvement to be effective. While there is some sharing of best practice, there has to date been no systematic attempt to provide a coherent narrative to these disparate developments, or to help parliaments to develop their role further by identifying and drawing together examples of best practice in one accessible document, distilling the essence of the good practices that have grown and the standards that have begun to emerge. The Inter-Parliamentary Union and UN Office of the High Commissioner for Human Rights are making a laudable attempt to collect and disseminate best practices, but this will primarily focus on the contribution of parliaments to the Universal Periodic Review. There is much more work to be done on how parliaments can contribute to the work of the international and regional human rights mechanisms as well as special procedures, and how parliaments can do more to protect and promote the rule of law and human rights at the domestic level.

Internationally agreed principles about the role and status of National Human Rights Institutions (the 'Paris Principles'⁴⁸) have existed since 1991. In 2012 a set of principles on the Relationship between National Human Rights Institutions and Parliaments (the 'Belgrade Principles'⁴⁹) were also agreed and subsequently adopted by the UN General Assembly. There are also a number of benchmarks for democratic parliaments.⁵⁰ To date however, there is no internationally agreed set of principles and guidelines on the role of parliaments in the protection and realisation of the rule of law and human rights, despite the recent burst of significant interest in and activity about the subject. We believe

⁴⁶ Commonwealth Africa Regional Seminar for Members of Parliament on the Role of Parliamentarians in the Promotion and Protection of Human Rights, 'Mahé Declaration' (Mahé, 19-21 March 2014) <www.cpahq.org/cpahq/cpadocs/MaheDeclarationSeychellesSeminar.pdf>

⁴⁷ Commonwealth Pacific Regional Seminar for Members of Parliament on the Role of Parliamentarians in the Promotion and Protection of Human Rights, 'Pipitea Declaration' (Wellington, 30 July – 1 August 2014) <thecommonwealth.org/sites/default/files/news-items/documents/SeminarDeclaration.docx>

⁴⁸ UNOHCHR 'Principles relating to the Status of National Institutions' (20 December 1993) <www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

⁴⁹ UNOHCHR 'Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments' (Belgrade, 22-23 February 2012) <<http://nhri.ohchr.org/EN/Themes/Portuguese/DocumentsPage/BelgradePrinciplesFinal.pdf>>

⁵⁰ See for example:

(1) UNDP 'Benchmarks and Self-Assessment Frameworks for Democratic parliaments: A Background Publication prepared for the International Conference on Benchmarking and Self-Assessment for Democratic Parliaments' (Brussels/New York) <http://agora-parl.org/sites/default/files/Background_Publication_Final_0.pdf>;

(2) Commonwealth Parliamentary Association, *Recommended Benchmarks for Democratic Legislatures* (2006) <<http://agora-parl.org/sites/default/files/CPA - Recommended Benchmarks for Democratic Legislatures - 12.2006 - EN - Standards.pdf>>; and

(3) Inter-Parliamentary Union, *Evaluating Parliaments: A self-assessment toolkit for parliaments* (2008) <www.ipu.org/pdf/publications/self-e.pdf>

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that, democratising the rule of law and human rights, by increasing the role of elected politicians in their protection and realisation, is an idea whose time has come.⁵¹

⁵¹ This background paper was prepared by Brian Chang, Researcher on the Parliaments and Human Rights Project, September 2015.